



POLICE DEPARTMENT

October 5, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Anthony Davila  
Tax Registry No. 921262  
Warrant Section  
Disciplinary Case No. 2014-12439

Detective Arthur Molnar  
Tax Registry No. 904600  
Warrant Section  
Disciplinary Case No. 2014-12437

Detective Jaime Rosado  
Tax Registry No. 914936  
Warrant Section  
Disciplinary Case No. 2014-12438

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The above-named members of the Department appeared before me on July 27, 2015, charged with the following:

Disciplinary Case No. 2014-12439

1. Said Detective Anthony Davila, on or about August 14, 2013, at approximately 1430 hours, while assigned to the Brooklyn North Warrants Division and on duty, in the vicinity of [REDACTED] Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said apartment without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

Disciplinary Case No. 2014-12437

1. Said Detective Arthur Molnar, on or about August 14, 2013, at approximately 1430 hours, while assigned to the Brooklyn North Warrants Division and on duty, in the



vicinity of [REDACTED], Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said apartment without sufficient legal authority.

**P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT**

2. Said Detective Arthur Molnar, on or about August 14, 2013, at approximately 1430 hours, while assigned to the Brooklyn North Warrants Division and on duty, in the vicinity of [REDACTED], Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched said apartment without sufficient legal authority.

**P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT**

Disciplinary Case No. 2014-12438

1. Said Detective Jaime Rosado, on or about August 14, 2013, at approximately 1430 hours, while assigned to the Brooklyn North Warrants Division and on duty, in the vicinity of [REDACTED] Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said apartment without sufficient legal authority.

**P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT**

2. Said Detective Jaime Rosado, on or about August 14, 2013, at approximately 1430 hours, while assigned to the Brooklyn North Warrants Division and on duty, in the vicinity of [REDACTED] Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched said apartment without sufficient legal authority.

**P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT**

The Civilian Complaint Review Board (CCRB) was represented by Jonathan Fogel, Esq., Respondents Davila, Molnar, and Rosado were represented by Michael Lacondi, Esq.

Respondents through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

The CCRB's Case

CCRB called Carean Guess as a witness.

The Respondent's Case

Respondents testified in their own behalf.

DECISION

Disciplinary Case No. 2014-12439

Respondent Davila is found Guilty of Specification 1.

Disciplinary Case No. 2014-12437

Respondent Molnar is found Guilty of Specifications 1 and 2.

Disciplinary Case No. 2014-12438

Respondent Rosado is found Guilty of Specifications 1 and 2.

SUMMARY OF EVIDENCE PRESENTED

It is undisputed in this case that in 2013, Respondents Molnar, Davila, and Rosado were assigned to the Brooklyn North Warrant Squad. On April 22, 2013, Respondent Molnar was detailed the lead detective in a search for a fugitive, Person A. Person A was wanted in connection with an alleged Assault in the First Degree,



for which an "I-Card" had been generated, as well as for failing to appear in a Bronx Supreme Court narcotics case. The address listed for the defendant on the Bronx bench warrant was [REDACTED] Brooklyn, NY. During the course of the investigation, Respondents conducted interviews of family members and associates of Person A. Among others, Respondents interviewed Person B, Person A's mother; Ms. Carean Guess, Person A's relative; and Person C, Person A's former girlfriend and victim from alleged assault for which Person A is wanted. Respondents visited as many as 20 different addresses in an attempt to apprehend Person A including: (1) three Brooklyn addresses, [REDACTED], and 8 [REDACTED] and (2) one Bronx address, [REDACTED]

On August 14, 2013, at approximately 1430, Respondents attempted to enter Apartment [REDACTED] Bronx, NY. This location was the residence of Ms. Carean Guess, Person A's relative, and a location at which Respondents believed they might find him. Respondents gained entry to the apartment, walked through it and saw Ms. Guess' boyfriend, Person D. Respondents questioned Person D about the whereabouts of Person A and Respondents Molnar and Rosado searched the inside of the apartment for him with negative results.

The disputed facts of this case concern: (1) the factual assertions forming Respondent Molnar's belief that Person A resided at 1 [REDACTED] and (2) the manner in which Respondents gained access to [REDACTED] A [REDACTED] on August 14, 2013.

The Civilian Complaint Review Board (CCRB) called one witness in support of the charges, Ms. Carean Guess. Respondents Molnar, Rosado and Davila testified in their joint defense.

### FINDINGS AND ANALYSIS

I credit the testimony of Carean Guess as forthright, logical, and consistent with other evidence in the case. Her testimony was not violently at odds with that of Respondents; in fact, the testimony was similar in many respects. While I also credit Respondents' respective testimonies in large part, I further find that Respondents tailored their testimony to minimize their culpability.

Respondents testified that they reasonably believed that Person A resided at [REDACTED], Bronx, NY, with his relative, Carean Guess. If this belief was reasonable, it would obviate the need for a search warrant to search therein for the presence of Person A. This tribunal finds that based upon the credible evidence in the record, Respondents' assumptions were not reasonable.

Respondents also testified that they did not enter Carean Guess' apartment forcibly; instead, they entered when the door to the apartment swung open without warning. Based upon the evidence in the record, the tribunal can find no credible support for this factual assertion.

A police officer in possession of an arrest warrant may enter any premises in which he reasonably believes the defendant to be present, provided that if the premises where he believes the defendant to be present is the dwelling of a third party, he obtains a search warrant for that premises (*Patrol Guide* § 208-42).



Person A's Residence

Respondent Molnar testified that during the course of the investigation, which commenced on April 22, 2013, he developed several investigative leads which, in the aggregate, supported his belief that Person A resided with his relative at [REDACTED]: (1) the assertion by Person C that, "if you find Carean, that's where you'll find him"; (2) the assertion by Carean Guess that Person A was her babysitter; (3) the presence of his white BMW car on the street near her residence; (4) the use of an Electronic Benefits Transfer card at a *bodega* near her apartment; and (5) the presence of a man's fedora, which Person A wore, inside Carean Guess' apartment.

For the reasons set forth below, I find that the record does not support a finding that these leads were sufficient to form a reasonable basis for inferring that [REDACTED] was Person A's residence.

Person B

Respondent Molnar testified that during an interview of May 6, 2013, Person A's mother, Person B, told him that Person A was living with his relative Carean (T. 120). The import of this assertion is undermined by Respondent's concession that it was not recorded on his DD-5 for that interview and by Person B's subsequent assertions, recorded in DD-5s memorializing interviews which took place on April 24, 2013 and July 18, 2013, that she had no idea where her son was (T. 121-122).

Person C

Respondent Molnar testified that he interviewed Person C on April 24; April 30; and May 13, 2013 (T. 127). During one of these interviews, Person C is alleged to have told him that Person A enjoyed a very close relationship with his relative Carean and "if



you find [her], you'll find him." Respondent Molnar testified that he interpreted that statement to mean that Person A was residing with that relative. Respondent Molnar conceded, however, that he never recorded that assertion on any of the DD-5s pertaining to those interviews (T. 129). Respondent further conceded that he interviewed Person C on May 31, 2013, and she informed him that Person A might be "staying with a girl on Fulton Street" (T. 158). Finally, Respondent interviewed Person C on August 13, 2013, and she reported that she had no new information on Person A's whereabouts (T. 171). In sum, Person C's various factual assertions amounted to conjecture.

Babysitter

Respondent Molnar testified that Carean Guess told him during one of his interviews, that Person A would babysit her son (T. 78). Respondent conceded that he never made an entry in a DD-5 of that assertion. Carean Guess, in her testimony, denied ever making that representation to Respondent Molnar. Ms. Guess testified, in stark contradiction to Respondent's assertion, that her son was of school age and that she dropped him off at a day care facility before attending her own classes, as she did on the date of Respondent's allegedly unlawful entry into her apartment. Moreover, a person's status as a babysitter does not mean that the person resides with the family of the child.

On May 17, 2013, Respondent Molnar visited [REDACTED] and showed Person A's picture to the superintendent of the building (T. 167). According to Respondent Molnar, the superintendent recognized Ms. Guess as a new resident but did not recognize Person A (Id.). Respondent Molnar visited [REDACTED] again on June 11, 2013, and conducted another interview with Carean Guess (T. 156). Ms. Guess again told Respondent Molnar that she didn't know where Person A could be found (T.



157). He again displayed Person A's photograph during a canvass of building residents with negative results (T. 169).

A reasonable inference to draw from the above investigative efforts was that Person A, at best, may have been an occasional visitor to the building but not a resident.

#### The BMW

Respondent Molnar testified that a white BMW vehicle, bearing Pennsylvania plates, was registered to Person A was often seen in the vicinity of [REDACTED] [REDACTED] (T. 79). Carean Guess testified that Person A loaned her that vehicle in the spring of 2013 for several months. Although she did not possess a driver's license, it was her testimony that her boyfriend and father of her son, Person D, with whom she resided, drove the car. At no point in the investigation did Respondents observe Person A operating the vehicle. On April 30, 2013, Respondents surveilled the vehicle to 1154 Manor Avenue in the Bronx and observed Person D operating the vehicle (T. 144). On May 1, 2013, a search of the Police Department license plate reader indices revealed that the vehicle had traveled overnight from the Bronx to Brooklyn (T. 149). Respondent conceded that he recorded "possible relative operating vehicle" in a DD-5 for that observation (Id.).

A follow-up interview with Ms. Guess on June 11, 2013, revealed that she had returned the car to Person A. (Id.). In three subsequent checks of Police Department indices on July 1; July 17; and July 25, 2013, the Respondents developed no new information regarding the vehicle (T. 152, 154, 155).

In sum, the leads regarding Person A's BMW were equivocal. He was never seen in the vehicle: the only person ever observed operating it was Person D and possibly



Ms. Guess. From June 27 to July 25, 2013, there was no new information learned on the vehicle's movements. Given the mobile nature of a vehicle and the reality that there was only sporadic surveillance of it, any useful leads gleaned from the information collected was insufficient to form a conclusion on residency.

### The Benefits Card

Respondent Molnar testified that he determined through a search of Human Resources Administration indices that Person A had an Electronic Benefits Transfer ("EBT") card (T. 80). During the course of the investigation, the indices were interrogated to learn whether the card had been used and, if so, where it had been used. Respondent Molnar testified that searches of the database revealed that Person A had used the benefits card at a *bodega* near his relative's apartment (T. 82). While Respondent Molnar initially asserted he developed that lead on June 25, 2013, he conceded that he never recorded that fact in the DD-5 he prepared discussing the check (T. 132). A search conducted on May 20, 2013, revealed that the card had also been used on three occasions in Brooklyn (T. 135). Three additional checks conducted on May 31; July 17; and July 25, 2013, revealed that there had been no additional uses of the EBT — card (T. 136, 137, 138).

As was the case with the checks on Person A's vehicle, the monitoring of his Electronic Benefits Transfer card use revealed disparate results that could not have been reasonably relied upon to conclude that Person A had established residence with his relative at [REDACTED]

The Fedora

Respondent Molnar testified that Person A was known to wear a fedora (T. 78). The trial record is silent as to how he developed this information. Respondent Molnar testified that on May 14, 2013, during one of his visits to Carean Guess' apartment, he noticed a man's fedora on a windowsill (T. 142). Respondent considered its presence evidence that Person A was residing at 1 [REDACTED] given the totality of the evidence presented, this was an unreasonable inference. Respondent Molnar conceded that he observed no other clothing in the apartment which appeared to belong to Person A and further conceded that he did not record that fact in his DD-5 (T. 143). Respondent Molnar conceded that on May 14, 2013, he visited 479 Putnam Avenue to look for Person A and saw clothing items which he thought belonged to Person A (T. 141-142). Finally, Respondent Molnar did not observe the fedora inside [REDACTED] on June 11, 2013, the last time he visited Ms. Guess' apartment before attempting to gain entry on August 14, 2013 (T. 142).

There was no assertion made by any of Respondents during their respective testimonies that this fedora was in any way unique. Furthermore, there was no evidence that anyone interviewed by Respondents ever stated that Person A wore a particular type of hat regularly enough for it to be considered a signature of sorts. Accordingly, Respondent Molnar's conclusion that the fedora was of a unique character, signifying Person A's presence, as well as all inferences drawn from that conclusion, are unsupported by the record.

In sum, Respondent Molnar's claim that he believed Person A resided with his relative at 1 [REDACTED] was not reasonable. This conclusion relied upon was



based upon little more than conjecture. In addition, each factor upon which he claimed to have based his conclusion was selected from among other data points which would permit a reasonable investigator to conclude that Person A resided in another location. Respondent Molnar never identified a witness who: (1) saw Person A at [REDACTED] or [REDACTED] or (2) saw Person A operating his white BMW near the building. The single occasion the investigation picked up evening movement of the vehicle, it was *en route* from the Bronx to Brooklyn, rather than the other way around.

While monitoring the use of Person A's Electronic Benefits Transfer card might have eventually yielded results, the evidence in the possession of Respondents pointed to its use in Brooklyn, rather than the Bronx. Finally, Respondents' reliance upon the presence of a man's fedora inside Apartment [REDACTED] was simply another interesting piece of the puzzle amounting to less than a hunch. When considered against the presence of other men's clothing in at least one other residence associated with Person A, the fedora had almost no investigative value.

The tribunal found it significant that several of the factors Respondent Molnar now claims were instrumental in reaching his conclusion that Person A was, in fact, residing with his relative were never recorded in his DD-5s. While he took issue with the suggestion that he was required to record every single event occurring during the investigation in a DD-5, that mindset seems to fly in the face of reason and common experience, particularly when applied to a seasoned 22-year Detective Second Grade.

Accordingly, I find Respondents lacked the authority to forcibly enter [REDACTED]

[REDACTED] under the outstanding Bronx Supreme Court bench warrant for



Person A because there was insufficient evidence from which to draw the conclusion that the apartment was, in fact, his residence.

Lacking the authority to forcibly enter the apartment. I find that Respondents had no authority to enter it. At no time did Respondents advance the argument that they obtained consent from an occupant of the apartment to enter it; in fact, the record supports a finding that Detective Molnar placed a call to Ms. Guess after his team had entered her apartment to inform her that he was inside it. The record is bereft of a suggestion, let alone any evidence, that Respondents believed they were dealing with an exigent circumstances scenario.

The testimony offered by Respondents Molnar and Rosado to the effect that the door to Apartment [REDACTED] simply "swung open" without their active intervention is not supported by the credible evidence in the record. Carean Guess testified that she locked her door once she left her apartment in the morning, an assertion which is plausible on its face. In contrast, the scenario described by Respondents Molnar and Rosado invites the tribunal to believe that Person D came to the door in response to their knocking, looked through the peephole, unlocked the door, and then ran back to a bedroom to hide. The testimony of Respondents Molnar and Rosado, on that point, runs contrary to experience and lacks evidentiary value (*see People v Joyner*, 126 AD3d 1002, [2d Dept. 2015])["The rule is that testimony which is incredible and unbelievable, that is, impossible of belief because it is manifestly untrue, physically impossible, contrary to experience, or self-contradictory, is to be disregarded as being without evidentiary value, even though it is not contradicted by other testimony or evidence introduced in the case"]; *People v*



*Rutledge*, 21 AD3d 1125, 1126 [2d Dept. 2005]; *People v Lastorino*, 185 AD2d 284 [2d Dept. 1992]).

Accordingly, it is the finding of this tribunal that Respondents entered Carean Guess' apartment without sufficient legal authority.

The Search of Apartment [REDACTED]

Once Respondents entered Apartment [REDACTED] it is undisputed that Respondents Molnar and Rosado searched its interior for the presence of Person A. Based upon the discussion above, lacking sufficient authority to enter Apartment 2C, [REDACTED] in the absence of obtaining consent to search, Respondents Molnar and Rosado searched Apartment 2C without sufficient legal authority.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Davila was appointed to the Department on July 1, 1998. Respondent Molnar was appointed on August 30, 1993. Respondent Rosado was appointed on January 30, 1995. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

Respondent Davila has been found guilty of entering an apartment without sufficient legal authority. The CCRB recommended a penalty of five vacation days, but recent cases support a lesser penalty. See *Disciplinary Case No. 2014-11569* (Sep. 10, 2015), in which a ten-year sergeant with no prior disciplinary record forfeited three vacation days for identical misconduct.

Because Respondents Molnar and Rosado have been found guilty of not just entering the apartment without sufficient legal authority but also wrongfully searching it, the CCRB's recommended penalty of five vacation days seems appropriate. *See Disciplinary Case No. 2007-82894* (Mar. 15, 2010), in which a thirteen-year sergeant with no prior disciplinary record forfeited five vacation days for entering and searching complainant's basement without sufficient legal authority to do so.

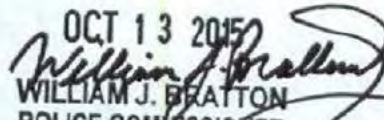
Based on the foregoing, it is recommended that Respondent Davila forfeit three vacation days. It is recommended that Respondent Molnar and Respondent Rosado forfeit five vacation days each.

Respectfully submitted,



Paul M. Gamble  
Assistant Deputy Commissioner – Trials

**APPROVED**

OCT 13 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
DETECTIVE JAIME ROSADO  
TAX REGISTRY NO. 914936  
DISCIPLINARY CASE NO. 2014-12438

Respondent Rosdao has received an overall rating of 5.0 “Extremely Competent” on his last three annual performance evaluations. He has been awarded one medal for Excellent Police Duty and one for Meritorious Police Duty. [REDACTED]  
[REDACTED] He has no prior formal disciplinary record.

For your consideration.

Paul M. Gamble  
Assistant Deputy Commissioner – Trials